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IN THE

Supreme Court of the United States

OCTOBER TERM 1945, NOS. 925-933

GERMAN-AMERICAN VOCATIONAL LEAGUE, INC., *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

D. A. B. RECREATIONAL RESORT, INC., *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

FRITZ SCHROEDER, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

ALBERT ROBERT BERTRAM, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

GUENTHER GIBBE, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

OTTO BREMER, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

THEODORE KOEHN, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

JOSEPH LIEBLEIN, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

GUSTAVE SCHMIDT, *Petitioner, Appellant below,*
vs.
UNITED STATES OF AMERICA, *Respondent, Appellee below.*

PETITION FOR WRITS OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRITS OF CERTIORARI.

To the Honorable the Supreme Court of the United States.

Your petitioners respectfully show:

I.

Summary Statement of the Matters Involved.

1. This is a petition for writs of certiorari to the United States Circuit Court of Appeals for the Third Circuit in nine appeals to said Court which were consolidated into one record and argued, considered and decided as one appeal. The grounds upon which the petition herein is based are that the decision of the Circuit Court of Appeals, as expressed in the opinion of the majority of that Court, and involving a federal question, is in conflict with decisions of this Court and decisions of other Circuit Courts of Appeals, and is contrary to the weight of authority.

2. The nine petitioners are among twenty-nine defendants and fifty-seven co-conspirators (not indicated) named in an indictment containing two counts. At the conclusion of the case the trial Court dismissed the first count and the case went to the jury on the second count of the indictment. The indictment was dismissed as to two of the defendants who were on trial. A directed verdict of not guilty was granted as to two other of the defendants. The jury found seven of the defendants on trial not guilty. The jury disagreed as to two other defendants on trial, and the nine defendants who appeal were found guilty. Two of these defendants, German-American Vocational League, Inc. and D. A. B. Recreational Resort, Inc., are corporations.

3. The gist of the charge in the indictment is that the defendants and their co-conspirators conspired to "cause, procure, assist, aid, abet and counsel" the German-American Vocational League, Inc., alleged to be an agency of the German Reich, to refuse and neglect to file the registration statement required under the McCormack Act and to defraud the United States, and that some of the defendants performed overt acts to effect the object of the conspiracy. While the German-American Vocational League is a New York corporation, the Government relied upon certain alleged overt acts done by some of the defendants in New Jersey to give the United States District Court in that district jurisdiction in the premises.

4. Before issue was joined a motion was made to quash both counts of the indictment, which motion was denied. At the end of the Government's case and at the end of the entire case motions were made for a directed verdict of not guilty and were denied as to petitioners.

5. Before the Court charged the jury various requests to charge were made by all of the defendants. Many of them were charged by the Court but some of them, particularly those with respect to the proof necessary to establish the existence of a conspiracy and the proof necessary to establish an agency under the McCormack Act, were denied. The individual defendants who were convicted and who appeal received two years' sentences and the two corporate defendants were fined $5,000 each. Sentence as to the defendant Gustave Schmidt was suspended.

6. Appeals from the judgment of the District Court were taken to the United Circuit Court of Appeals for the Third Circuit which, by a divided court, affirmed the judgments of the District Court on January 31st, 1946.

II.

Questions Presented.

The questions presented are:

1. Was there any proof of an agency contract between German-American Vocational League, Inc. and a foreign principal as contemplated in the McCormack Act (Act of June 8, 1938, 52 Stat. 631, as Amended by Act of Aug. 7, 1939, 53 Stat. 1244) so as to require registration with the Secretary of State;

2. Was there proof of a conspiracy between the defendants and their co-conspirators to advise and counsel one named conspirator (German-American Vocational League) to violate the McCormack Act to defraud the United States;

3. Is "propaganda" the subject of expert testimony and was the testimony adduced by the Government proof that the defendants were engaged in disseminating propaganda for the German Reich;

4. What are the proper limits of cross examination of a witness whose credibility is under attack, and whose testimony is relied upon in large measure to establish the alleged conspiracy.

5. Did the trial Court err in refusing to charge the jury as requested by the defendants with respect to the proof required to establish a contract of employment as contemplated by the McCormack Act.

III.

Statement of the Case.

The Government at the trial called one Arthur H. Volbers who had been a member in Germany of D. H. V., the parent organization in 1922, (R. 17a) and who joined the New York local in 1924 (R. 19a) and was national treasurer or secretary from 1934 to 1939 (R. 20a), who testified that prior to 1890 there existed in Germany, with headquarters at Hamburg, an organization on the order of a union of Commercial workers, clerks, bank employees, etc. known as D. H. V. with branches in other parts of the world including a local in New York, (R. 143a). The New York local was formed about 1902 and incorporated under the New York Membership Corporation Law in 1928, under the name D. H. V., German-American Commercial League. In 1936 its name was legally changed to German-American Vocational League and is generally known as D. A. B.,

which hereinafter will be used for the sake of brevity (R. 19a). It had four or five chapters in the United States. At first one-half of the dues of the members was kept in the United States and the other half sent to the parent organization in Hamburg, for which the members were entitled to unemployment relief and a monthly publication sponsored by D. H. V. in Germany and known as "The German Merchant in Foreign Countries", (R. 21a). In 1936 the name of the publication was changed to "The German in North America" and the magazine was then sponsored by the German Labor Front, a part of the German Government (R. 22a).

After 1935 or 1936 members were made up of people of all trades and professions (R. 24a).

After 1933, when the Government of Germany came under the control of the National Socialists about fifty per cent of the dues continued to be sent to Germany without any correspondence and the pension rights and unemployment relief were preserved (R. 42a).

In June or July, 1936, discussions were held in New York with one Euting, a representative of the German Labor Front which resulted in a written agreement to the effect that after January 1, 1937, dues of the members who were American citizens would be kept in New York and seventy-five per cent of the dues of members who were German Nationals would be sent to Germany. Discussion also included the question of the refund by the parent organization of the dues previously sent to Germany by members who were American citizens. Euting was told that any funds refunded would be invested in a country place and he promised his assistance to get the refund from the German

Labor Front. The written contract was entered in about July 1936, but no copy was produced. It provided also for the return to D. A. B. of all dues paid between 1933 and 1936 by American citizen members, the amount to be computed and agreed upon later (R. 50a to 62a).

The German Labor Front paid between $12,000 and $13,000 in 1937 and 1938. The payment was made by one Zeglin, the representative of the German Labor Front. After the agreement went into effect in January, 1937, Zeglin, who was, under the agreement, to take care of the German National members, had a desk at the D. A. B. office. The money that was refunded came through other countries such as South America, England and Holland (R. 69a, 70a).

Zeglin was registered with the Secretary of State as a German Consulate representative (R. 71a).

The money was deposited in the D. A. B. bank account and about $4,000 was used toward the purchase of Camp Bergwald at Riverdale, New Jersey, and the rest for overhead expenses (R. 71a).

The agreement also provided for a certain number of copies of the publication of the German Labor Front including "The German in Foreign Countries" technical magazines and various trade papers to be sent to D. A. B. for distribution to its members. It also provided for German members to use the recreational facilities of D. A. B. in this country and Americans who went to Germany could use the same facilities there (R. 72a, 73a).

In 1938, it came to the attention of the officials of D. A. B. that Congress was considering the control and registration

of propaganda agents for foreign principals. Thereupon the officers of D. A. B. obtained the advice of their lawyers and decided to cancel the agreement with the German Labor Front rather than register with the Secretary of State if the bill passed (R. 77a to 92a).

After the cancellation of the contract in the fall of 1938, Zeglin, who had been in Germany, returned and said that he was going to set up his own German Organization and left the offices of D. A. B. entirely (R. 102a). He took his desk and files to the office of the German Consular office and operated under the name "Association of German Nationals" and with very few exceptions, the German National members of D. A. B. left the D. A. B. (R. 102a).

The by-laws of D. A. B. amended July 7, 1938, provided for two classes of members, resident and non-resident, and American citizens of German birth or descent were eligible. A few German Nationals re-entered the organization (R. 104a to 108a).

D. A. B. had a youth group under the charge of the defendant Lieblein which went to the summer camp at Bergwald (R. 112a).

In 1937, Lieblein, Heinz John and one Stecher, members of the youth group, made a two months trip to Germany where they took part in sport activities at a youth camp which was under the auspices of the Hitler Youth Movement (R. 113a and 115a).

The defendant Gustave Schmidt, who was suffering from tuberculosis, went to Germany for treatment. The D. A. B. and Mr. Schmidt each paid part of his travelling expenses while hospital bills and maintenance in Germany were paid through D. A. B. there (R. 116a).

Prior to the cancellation of the contract with the German Organization in 1938, D. A. B. had shown films such as "Echo of the Home Land" and "Triumph of Will" which had been obtained from German Railroads Information Bureau but after the cancellation of the contract in 1938, no German films were shown (R. 125a-128a).

When the money was repaid by the German Labor Front to D. A. B. a list came from Germany showing the amount repaid and credited to each member, at the average of about $25.00 (R. 134a).

After Zeglin withdrew his group of German Nationals, the two organizations were separate and distinct, and rivals (R. 138a).

$3,500.00 was still due D. A. B. from the German organization, but it was never repaid although repeated efforts were made to get the money (R. 139a).

When Camp Bergwald was purchased title was taken in the name of a separate Corporation "D. A. B. Recreational Resort, Inc." a stock corporation; all of the stock was owned by D. A. B., and D. A. B. loaned it about $3,000., entry of which appeared on the books of D. A. B. and which has never been repaid (R. 140a, 141a).

The original parent organization was a union with employment service, old age pension, and sick and death benefits, with branches throughout the world, where young German immigrants coming to a strange country could find jobs and be greeted as newly arrived inhabitants of whatever land they happened to come to. The United States group also had a small summer home, a singing group, a card playing group, stamp collecting and musical groups (R. 144a).

After the incorporation in 1928, members in New York continued to be entitled to benefits of the old organization based upon their years of membership (R. 145a).

Each chapter had its own office (R. 146a).

At meetings of the various chapters programs for entertainment and matters of that kind were mostly discussed (R. 147a).

The showing of films was not secret and many of them were exhibited in other American organizations and universities (R. 147a).

In 1934 or 1935, the parent organization together with the fund which had been created for it was taken over by the German Labor Front, at which time the troubles of the American organization began (R. 148a).

At the meeting of the Board of Directors March 1, 1938, at which the refund was discussed, none of the defendants on trial was shown to be a director or present (R. 150a).

The papers and magazines which came from Germany and the one printed in New York was also sent to the large libraries in the United States (R. 156a).

Legal advice was sought in 1938 to make sure whether the organization should register, and it was not registered because counsel advised them to cancel the contract and then it would not come under any of the provisions of the McCormack Act which went into effect September 8, 1838. They were told they did not have to register, because they were not an agency of any German organization. All directors felt that after the ending of the contract with the German organization they were not connected in any way with

any agency of the German Reich or any other German organization (R. 157a to 159a).

Sick benefits and unemployment insurance were regularly paid from Germany for 20 years until the contract in January, 1937, was cancelled (R. 170a). The money received back from Germany represented money paid by United States citizens from 1933. The balance paid in by German Nationals was never refunded (R. 172a). D. A. B. took care of all sick and unemployment benefits although it maintained no sinking fund and loaned the money refunded from Germany to D. A. B. Recreational Resort, Inc., for the purpose of building Camp Bergwald (R. 173a).

There was one employee who did nothing but get work for unemployed members without charge (R. 178a).

When Zeglin left to form his own organization, he took with him the German Nationals, about 65% of the whole membership (R. 182a). D. A. B. avoided using the German Labor Front for recruiting members (R. 566a), and was not under instructions from any German organization (R. 567a).

After the contract between D. A. B. and the German Labor Front was cancelled in 1938, there were no secret understandings, agreements, or arrangements with the German Labor Front (R. 569a) and no discussion of such (R. 570a).

One Otto Johannsen, who was also called by the Government, testified that he had also been a member of D. H. V. in Germany, and was national president of D. A. B. from 1923 to 1938 and president of D. A. B. Recreational Resort, Inc., from the time of its incorporation, June 15, 1937, until 1938 (R. 273a, 274a). He testified substantially as

did Volbers concerning the relationship between D. A. B. and the parent organization in Germany until after the relationship was terminated in 1938.

His testimony as to the negotiations with Euting was practically the same as Volbers' (R. 287a). He testified specifically upon his direct examination that the agreement between D. A. B. and the German Labor Front was cancelled for various reasons, one of which was that D. A. B. decided "that we didn't want to have any affiliation with a foreign organization as long as our Government did not look with favor upon it" (R. 318a).

There was publicity in the newspapers concerning the McCormack Act before it was finally passed (R. 319a).

As a result of the cancellation of the contract the by-laws were changed and the distribution of the German Labor Front organ called "Der Deutsche Im Ausland" was discontinued (R. 321a), and no lecturers were heard (R. 328a).

Under date of August 18, 1938, a letter was sent to the members advising them that the contract between D. A. B. and the German organization was brought to an end July 31, 1938 (R. 331a).

The only object of Gustave Schmidt, one of the defendants going to Germany in 1936, was for him "to get cured" (R. 340a).

The defendant Lieblein and two other young men were sent to Germany as a reward for their work in the youth group of D. A. B.

Among the speakers before D. A. B. were Collin Ross, and at festivals Dr. Draeger of the German Consulate and

on some occasions Dr. Borchers, the German Consul General (R. 359a and 360a).

Mr. Johannsen identified a number of reports of the New York Chapter from 1933 on and a number of pieces of correspondence.

Upon cross examination, both Volbers and Johannsen testified that there were no secret understandings or agreements between D. A. B. and the German Labor Front which had not been disclosed in Court (R. 483a, 484a, 566a).

The foregoing constitutes the only direct evidence as to any contract, agreement or arrangement between defendant D. A. B. in New York, and D. H. V., the parent organization in Germany or any branch of the German Government from the time D. H. V. was taken over by the German government in 1933.

A mass of testimony was produced by the Government at the trial to show that from the beginning of the Hitler regime the German government absorbed and took over the parent organization in Germany and that the relations between the German organization and D. A. B. continued close until the cancellation of the arrangement between D. H. V. in Germany and D. A. B. in New York in July, 1938. The record is void as to the continuation of any such relationship subsequent to July, 1938.

While in addition to the foregoing there was a further mass of testimony and exhibits relating to various activities of D. A. B. over a period of years, there is an utter lack of any proof either by oral testimony or documentary evidence of any other agreement of any kind whatsoever between D. A. B. and a foreign principal, than that testified to by Johannsen and Volbers.

IV.

Statutes Involved.

Act of June 8, 1938, 52 Stat. 631 as amended by the Act of August 7th, 1939, 53 Stat. 1244 (McCormack Act), pertinent excerpts:

Section 1 (a):

"The term person means an individual, partnership, association or corporation. * * *"

Section 2:

"The term 'agent' of a foreign principal means any person who acts or engages to act or agrees to act as public relations counsel, publicity agent or as an agent, servant, representative or attorney for a foreign principal."

1939 Amendment, *Agent:*

"Any person who receives compensation from or is under the direction of a foreign principal."

Section 2 (c) provides:

"Every person who is now an agent of a foreign principal shall, within thirty days after this Act takes effect, and every person who shall thereafter become an agent of a foreign principal shall forthwith file with the Secretary a Registration statement, under oath, on a form prescribed by the Secretary, which shall set forth:

(1) The name, business address and residence address of the registrant.

(2) Name of the foreign principal or other person or organization for which such person is acting as agent.

(3) A copy of all contracts of employment under which such person acts as such agent, if written, or

a full statement of the terms and conditions thereof if oral.

(4) The date when such contract was made; the date of commencement of activity thereunder and the period in which such contract is to be in effect; the compensation to be paid, if any and the form and time of payment under said contract.

(5) The name of every foreign principal or every person or organization who has contributed or promised to contribute to the compensation provided in such contract and if the registrant be a partnership, association or corporation, a true and complete copy of its charter, articles of incorporation, co-partnership, association, constitution and by-laws and any other instrument or instruments relating to its organization powers and purposes."

Section 5:

"Any person who wilfully violates any provision of this Act shall be punished. * * *"

Title 22 U. S. C. 611, 56 Stat. 249, McCormack Act, 1942 Amendment:

"(c) * * * (1) any person who acts or agrees to act, within the United States, as, or who is or holds himself out to be whether or not pursuant to contractual relationship, a public-relations counsel, publicity agent, information-service employee, servant, agent, representative, or attorney for a foreign principal; * * *"

Title 22 U. S. C. 612:

"* * * (4) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the

circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal; * * *

"(9) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder; * * *"

V.

Reasons for Allowance of Writs.

(1) The Circuit Court of Appeals, as appears by the opinion of the majority of the Court, decided in effect that the government was not required to prove an express contract of employment to bring the petitioner, German American Vocational League, within the terms of the McCormack Act providing for the registration of agents of foreign principals.

This decision not only violates the clear language of the statute itself but is, we urge, in conflict with the principle decided by this Honorable Court in the case of *Viereck* v. *United States,* 318 U. S. 236.

The minority opinion in the instant case, it is urged, correctly interprets the language of the statute, and should have prevailed.

(2) The government utterly failed to prove the existence of any agreement between the German American Vocational League and a foreign principal, to spread Nazi propaganda and the Circuit Court of Appeals in deciding that "the Government affirmatively alleged and its evidence tended to show that the written contract (cancelled in July 1938) which did not allude to propaganda was not the whole agreement between the parties, reached a conclusion not supported by any evidence in the case.

(3) As the burden of proof to prove the charges in the indictment rested upon the government, it produced two witnesses for this purpose, Johannson and Volbers, officers of German American Vocational League in 1938 to prove the relationship between the League and the German Labor Front. They testified as to the existence of a contract and the only contract that existed and its cancellation in July 1938. The credibility of their testimony was not impeached or contradicted by witnesses for the government or the defense. They were explicit in denying that any other agreement (secret or otherwise) existed. The Circuit Court of Appeals therefore erroneously decided that "the testimony and the credibility of those two witnesses were for the jury to pass upon along with the other evidence in the case", overlooked the utter lack of any proof of the existence of any contract or agreement not disclosed by Johannson and Volbers.

(4) The Circuit Court of Appeals in the majority opinion decided in effect that a person with little experience

may express an opinion which may be received as evidence that certain writings can, according to an analysis developed by the witness be interpreted as propaganda. In support of its decision it relies upon the case of *United States* v. *Pelley,* 132 Fed. (2d) 170, and certain text books on the law of evidence. It is urged that while the testimony of experts in certain fields is admissible that the art or science of determining what is "propaganda" has not been sufficiently developed to permit a further exception to the well established rule concerning "hearsay" testimony.

(5) "For national security reasons" the cross examination of a most discreditable witness (Richards) was limited by the Trial Court. Just what these "national security reasons" were was not disclosed at the trial. While the Circuit Court of Appeals upheld the Trial Court in restricting cross examination, in doing so it is urged that it violated the rule laid down by this Honorable Court in *Alford* v. *United States,* 282 U. S. 687 and the weight of authority.

(6) The Circuit Court of Appeals failed to pass upon the important question as to whether or not the defendants on trial were, since 1938, engaged in counseling or advising at the command or behest of the German Reich, the German American Vocational League not to register as an agent of the German Reich. It was not proved at the trial and such failure of proof was urged on appeal. Yet the Circuit Court of Appeals brushes these contentions and arguments aside by the simple assertion or finding that "It is enough to say that it (the evidence) involved all of them as active participants in the conspiracy charged to a greater or less degree. No errors appear which substantially prejudiced the appellants."

(7) The trial court was specifically requested to charge the contractual elements necessary to be proven in order to bring the German-American Vocational League within the provisions of the McCormack Act. This the Court refused to do. The Circuit Court of Appeals disposes of this ground of appeal (with others) with the statement that "the balance of appellants' points not included in the above discussion have been carefully examined and are without merit."

Wherefore your petitioners pray that a writ of certiorari issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding the said Court to certify and send to this Court for its review and determination on a day certain to be therein designated, a full and complete transcript of the record and of all the proceedings of the said Circuit Court of Appeals, in the said case entitled in that court: *United States of America* vs. *German-American Vocational League, otherwise known as Deutsch-Amerikanische Berufsgemeinschaft, or D. A. B., United States of America* vs. *D. A. B. Recreational Resort, Inc., United States of America* vs. *Fritz Schroeder, United States of America* vs. *Albert Robert Bertram, United States of America* vs. *Guenther Gibbe, United States of America* vs. *Otto Bremer, United States of America* vs. *Theodore Koehn, United States of America* vs. *Joseph Lieblein, United States of America* vs. *Gustave Schmidt,* Nos. 8668 to 8676, October Term, 1944, to the end that these cases may be reviewed and determined by this Court as provided for by the statutes of the United States and that the judgment herein of the Circuit Court of Appeals be re-

versed by this Honorable Court, and for such other further relief as to this Court may seem proper.

GERMAN-AMERICAN VOCATIONAL LEAGUE, INC., otherwise known as DEUTSCH-AMERIKANISCHE BERUFSGEMEINSCHAFT, or D. A. B.,

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